

Served: June 3, 1992

NTSB Order No. EA-3572

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of May, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

SE-8793

v.

WILLIAM TER KEURST, SR.,

Respondent.

ORDER DENYING REQUEST FOR EXTENSION
OF TIME TO FILE PETITION

The respondent, by counsel, has filed a one-page document, styled a "Petition for Rehearing, Reargument, Reconsideration or Modification," in which it is asserted that "new evidence has been discovered which was not available at the hearing as to the identity of the pilot involved in these flights" and that "there are further grounds in support of this petition".¹ The filing seeks an additional 30 days within which to submit "contentions and grounds" in support of the petition.² However, inasmuch as

¹Although the petition does not cite the Board Order to which it presumably refers, we note that in Board Order EA-3460 (served December 31, 1991), we affirmed an order of the Administrator suspending respondent's commercial pilot certificate for 180 days for his alleged violations of sections 91.90(a)(1)(i), 91.18(a), and 91.9 of the Federal Aviation Regulations.

²No response to the petition has been received from the Administrator.

the petition does not, among other deficiencies, indicate the nature of the "new evidence" nor the "further grounds" on which it is based, it does not qualify as a valid petition under Section 821.50(c) of the Board's Rules of Practice.³ As a result, it will be treated as a request for an extension of time to file a Rule 50 petition.

To obtain an extension of time to file a Rule 50 petition, a party must demonstrate "extraordinary circumstances".⁴ In this connection, respondent recites only that the Board's order "has just been received by counsel and counsel and Respondent must meet and prepare a proper submittal; Respondent and his counsel are in different cities."⁵ In our judgment, a party seeking additional time to file a Rule 50 petition must, at a minimum, establish why the petition could not have been prepared and filed within the 30 day period after service of the Board's order. See Section 821.50(b). It is not enough, in our view, for counsel

³Section 821.50(c) of the Board's Rules of Practice provides as follows:

"§821.50 Petitions for rehearing, reargument, reconsideration, or modification of an order of the Board.

* * * *

(c) Contents. The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, the ground or grounds relied upon, and the relief sought. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the order of the Board, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation why such substantiation is unavailable, and shall explain why such new matter could not have been discovered by the exercise of due diligence prior to the date of the hearing."

⁴Section 821.11 provides as follows:

"§821.11 Extensions of time.

Upon written request filed with the Board and served upon all parties, and for good cause shown, the chief law judge, the law judge, or the Board, may grant an extension of time to file any document except a petition for reconsideration. Extensions of time to file petitions for reconsideration will be granted only in extraordinary circumstances."

⁵Respondent's petition is dated January 29, 1992.

for a party merely to assert that he has "just received" an order served both on him and on his client about a month earlier. In fact, we think the absence of any explanation for the delay in seeking additional time in this case precludes any determination that extraordinary circumstances exist for the requested extension.⁶ It must therefore be denied.

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's request for an extension of time to file a petition under Section 821.50 is denied.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

⁶Respondent has not, in the roughly three month period following his submission of his extension request, provided any information that would support the filing of a Rule 50 petition.